

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leanne Fornelli	Team: Squad #8	CCRB Case #: 201405978	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/15/2014 11:59 PM, Monday, 06/16/2014	Location of Incident: East 138th Street and 3rd Avenue	Precinct: 40	18 Mo. SOL 12/15/2015	EO SOL 12/15/2015	
Date/Time CV Reported Mon, 06/16/2014 1:25 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 06/16/2014 1:27 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Peter Curran	694	928139	040 PCT
2. POM Jose Romero	18022	940670	040 PCT
3. POM Michael Sheehan	09074	951242	040 PCT
4. POM Shawn Liriano	03658	951924	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Romaine Wilson	00910	949804	040 PCT
2. POM Kevin Dempsey	22807	953813	040 PCT
3. POM Victor Calderin	12315	951579	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Peter Curran	Abuse: Sgt. Peter Curran stopped the car in which § 87(2)(b) was an occupant.	
B.SGT Peter Curran	Abuse: Sgt. Peter Curran handcuffed § 87(2)(b)	
C.SGT Peter Curran	Abuse: Sgt. Peter Curran searched the car in which § 87(2)(b) was an occupant.	
D.POM Jose Romero	Abuse: PO Jose Romero drew his gun.	
§ 87(4-b) § 87(2)(g)		

Case Summary

On June 15, 2014, at 11:59 p.m. § 87(2)(g)

§ 87(2)(b) Sgt. Peter Curran of the 40th Precinct stopped § 87(2)(b) in his vehicle at East 138th Street and 3rd Avenue in the Bronx (**Allegation A**). § 87(2)(b) alleged the following: Twelve or more other officers of the 40th Precinct arrived and Sgt. Curran instructed an officer to handcuff § 87(2)(b) (**Allegation B**). Sgt. Curran and multiple officers who included PO Romaine Wilson of the 40th Precinct then searched § 87(2)(b)'s car (**Allegation C**). During the car search, PO Jose Romero of the 40th Precinct drew his gun (**Allegation D**). § 87(2)(b) was released with a summons for § 87(2)(b) (encl. 5d-5e). § 87(2)(g)

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) was offered mediation as means to resolve his complaint at the conclusions of the phone statement he provided on June 24, 2014, and his verified interview on July 17, 2014. § 87(2)(b)
- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of March 6, 2015, with regard to the incident (encl. 12l).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3a).
- Sgt. Curran has been a member of the service for thirteen years and has had four other CCRB allegations pled against him in three cases. None of these allegations were substantiated § 87(2)(g) (encl. 2a).
- PO Romero has been a member of the service for nine years and has had six other CCRB allegations pled against him in two cases. None of these allegations were substantiated § 87(2)(g) (encl. 2b).
- This is the first CCRB complaint against PO Sheehan during his three year tenure as a member of service (encl. 2c).
- PO Liriano has been a member of the service for three years and has had two other allegations pled against him in one case. One of these allegations was a vehicle search. None of these allegations were substantiated (encl. 2d).

Findings and Recommendations

Explanation of Subject Officer Identification

- Sgt. Curran acknowledged stopping § 87(2)(b)'s car and placing his head inside the car. While he could not recall if § 87(2)(b) was placed in handcuffs, § 87(2)(b) alleged that he instructed an officer to do this, information which was corroborated by PO Wilson. While § 87(2)(b) said that seven other officers besides Sgt. Curran searched his car, the circumstances indicate that this was based on Sgt. Curran's initial observation and he was the only supervisor on the scene. § 87(2)(g)
- § 87(2)(b) alleged that during the car search, PO Wilson's partner, who stood near § 87(2)(b)

§ 87(2)(b) drew his gun and pointed it toward the marked van three or four times. In his email, § 87(2)(b) wrote that the officer pointed the gun toward a fellow officer. § 87(2)(g)

- As PO Sheehan and PO Liriano acknowledged being at the scene of the incident and made no memo book entries (encl. 8a-8c; 9a-9c) in regard, § 87(2)(g)

Allegation A: Abuse of Authority: Sgt. Peter Curran stopped the car in which § 87(2)(b) was an occupant.

It is undisputed that Sgt. Curran, who worked alone at the time of the incident, stopped § 87(2)(b)'s car. § 87(2)(b) said that Sgt. Curran told him that he was stopped because his headlights were off, but § 87(2)(b) denied the accuracy of this. § 87(2)(b) said that when he spat later in the incident, the officers acted as if they had a “bingo.” In his phone statement, he said that when he spat, an officer said, “Hey man, he just spit. That’s good right?” and another officer responded, “Oh, yeah. Thank God. We can just write him a spitting summons.”

Sgt. Curran said he primarily stopped § 87(2)(b) because his headlights were off. It is also possible that § 87(2)(b) did not signal when he made a turn, but Sgt. Curran could not recall this for certain. During the course of the incident, Sgt. Curran learned that § 87(2)(b) was driving with only his learner’s permit and while he could not recall what § 87(2)(b) said about this, his answers were evasive and inconsistent. Sgt. Curran said that while he could have issued § 87(2)(b) a summons for these violations, he used his discretion and only a summons for § 87(2)(b) was issued. No other civilian or officer was a witness to the car stop.

§ 87(2)(g)

Allegation B: Abuse of Authority: Sgt. Peter Curran handcuffed § 87(2)(b)

§ 87(2)(b) alleged that after Sgt. Curran returned his license and registration, Sgt. Curran asked him to step out of the car. § 87(2)(b) did not understand why he was asked to do this, but he did so immediately. Sgt. Curran instructed one of the eleven backup officers to handcuff him and one did so. § 87(2)(b) was made to sit handcuffed in the back of a patrol car before being released with a summons for § 87(2)(b) (encl. 5d-5e).

Sgt. Curran said that as he approached the driver’s door, § 87(2)(b) made movements with his hands toward the center of the car. When Sgt. Curran was at the door, § 87(2)(b) continued these movements toward his right side near his seatbelt buckle. Sgt. Curran told § 87(2)(b) to keep his hands where he could see them (he could not recall how many times), but § 87(2)(b) continued. As § 87(2)(b) was noncompliant with instructions to keep his hands in view, Sgt. Curran asked § 87(2)(b) to exit his car and he did so immediately. Sgt. Curran could not recall if § 87(2)(b) was handcuffed or if he did anything during the incident that necessitated this, but § 87(2)(b) was never considered under arrest. Sgt. Curran said he called for backup because he was working alone, but not because of anything § 87(2)(b) did, and five additional officers responded. Sgt. Curran determined that § 87(2)(b) was reaching toward about four

cartons of cigarettes, which were unremarkable.

Although PO Wilson could not recall who handcuffed § 87(2)(b) he said that this was done upon Sgt. Curran's instruction to one of the four backup officers, who included PO Wilson, to do so. § 87(2)(b) was not considered under arrest and never exhibited behavior that caused PO Wilson to fear for his safety, but this was done for cautionary measures. PO Romero, PO Sheehan and PO Liriano could not recall § 87(2)(b) being placed in handcuffs.

Officers must have a reasonable suspicion of criminal activity to justify the seizure of an individual, People v. De Bour, 386 N.Y.S.2d 375 (June 15, 1976) (encl. 1a-1k). Regarding New York Vehicle and Traffic Law violations, arrests should not involve custodial arrest where the issuance of a summons is an alternative to such arrest, People v. Bradford, 957 N.Y.S.2d 637 (May 21, 2011) (encl. 1l-1r).

§ 87(2)(g)

Allegation C: Abuse of Authority: Sgt. Peter Curran searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) said that when he stepped out of his car, he tried to close the door behind him, but Sgt. Curran stopped it from closing and asked him what he had to hide. After § 87(2)(b) was handcuffed and sat in a patrol car, about eight officers who included Sgt. Curran and PO Wilson searched § 87(2)(b)'s car in the front and backseats, and in the trunk. The officers found nothing.

Sgt. Curran said that as he approached the driver's door, § 87(2)(b) made movements with his hands toward the center of the car. When Sgt. Curran was at the door, § 87(2)(b) continued these movements and they were toward his seatbelt buckle on his right. Although Sgt. Curran told § 87(2)(b) to keep his hands where he could see them (he could not recall how many times), § 87(2)(b) continued the movements. This raised Sgt. Curran's suspicions that a weapon or something that could cause harm to him could be inside the car. He initially said that after § 87(2)(b) stepped out of the car, he closed the door behind him, and Sgt. Curran did not ask him to keep the door open or if he had something to hide. He then said the door remained open from when § 87(2)(b) exited. Sgt. Curran leaned into the driver's door so his head was inside and peered in the area toward which § 87(2)(b) reached. He determined that § 87(2)(b) was reaching toward about four cartons of cigarettes. He did not touch the cigarettes or anything inside the car, nor did he look anywhere else or otherwise search it. He did not later tell PO Wilson that he found untaxed cigarettes, never suspected § 87(2)(b) of having them and never underwent the training to identify them. He never popped the trunk of the car. He was satisfied after looking inside that there was no weapon in the car. The backup officers who arrived never entered the car.

PO Wilson said that other officers who included Sgt. Curran shone their flashlights into

§ 87(2)(b) s car. No other door besides the driver's door was opened and no compartment within the car was opened. The trunk was never opened. Officers entered the car, but PO Wilson was unsure of who as their backs faced him. He was unsure if Sgt. Curran was one of these officers. PO Wilson did not search any part of § 87(2)(b) s car. After the incident, Sgt. Curran told him that § 87(2)(b) s car was searched because he was trying to hide several cartons of untaxed cigarettes, which made him feel nervous and call for backup. Sgt. Curran mentioned no other reason for the search. No other interviewed officer acknowledged searching the car or seeing another officer do this.

The event chronology for Event D14061527646 (encl. 12a-12b) shows that at 11:59 p.m., Sgt. Curran requested backup and the disposition of summons issued was transmitted at 12:21 a.m. Sgt. Curran's memo book (encl. 6a-6b), which was faxed to the CCRB after his interview, notes that he conducted the car stop at 11:55 p.m. and resumed patrol at 12:20 a.m.

Breaching the plane of a car doorway to peer deeply inside the vehicle constitutes a search, People v. Hernandez, 656 N.Y.S.2d 12 (1st Dept. 1997) (encl. 1s-1t). In order for an officer to search a vehicle without a warrant, there must be probable cause to believe that contraband, evidence of a crime, a weapon or some means of escape lies therein, People v. Smith, 949 N.Y.S.2d 472 (2nd Dept. 2012) (encl. 1u-1v). Furtive movements observed in a car whose driver twice refused to pull over and nearly struck a pedestrian in an attempt to flee created a perceptible risk that a weapon was inside the car and justified only a limited search in the area where the furtive movements had been observed, People v. Mundo, 750 N.Y.S.2d 837 (November 19, 2002) (encl. 1w-1aa). An officer's observation of furtive movements within a car does not alone justify a search of the car if a defendant is in no position to obtain a weapon when a search is conducted, People v. Derrell, 889 N.Y.S.2d 95 (December 3, 2009) (encl. 1bb-1oo).

§ 87(2)(g)

§ 87(2)(g)

Allegation D: Abuse of Authority: PO Jose Romero drew his gun.

§ 87(2)(b) alleged that during the car search, PO Romero, who stood near § 87(2)(b) drew his gun and pointed it toward the marked van three or four times. In his email, § 87(2)(b) wrote that the officer pointed the gun toward a fellow officer.

PO Romero denied drawing his gun and every interviewed officer denied seeing an officer with their gun drawn.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

[Redacted text block]

Pod: 8

Investigator:	_____	_____	_____
	Signature	Print	Date
Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
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Reviewer:	_____	_____	_____
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